



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 74

[MB Docket No. 03-185; GN Docket No. 12-268; ET Docket No. 14-175; FCC 15-175]

Low Power Television Digital Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted several measures to facilitate the final conversion of low power television (LPTV) and TV translator stations to digital service. The Commission also adopted proposals to mitigate the potential impact of the broadcast television spectrum incentive auction and the repacking process on LPTV and TV translator stations and to help preserve the important services they provide.

DATES: The rules will become effective **[Insert 30 days after date of publication in the Federal Register]**, except for §74.800, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The Commission will publish a document in the Federal Register announcing the effective date for those rules.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Shaun.Maher@fcc.gov of the Media Bureau, Video Division, (202) 418-2324. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via e-mail Cathy.Williams@fcc.gov

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third R&O. The full text is available for inspection and copying during regular business hours in the FCC

Reference Center, 445 12th Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate Federal Register Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, see 44 U.S.C. § 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act: The Commission will send a copy of this Third Report and Order to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis:

1. In this Third R&O, the Commission: (1) extends the digital transition deadline for analog LPTV and TV translator stations to 12 months after completion of the incentive auction 39-month post-auction transition period; (2) harmonizes this deadline with the construction deadline for new digital LPTV and TV translator stations; and (3) adopts rules to allow channel sharing, outside the auction context, between LPTV and TV translator stations.

The Commission announces that it will use software developed for use in the incentive auction to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels. In addition, the Commission creates a “digital-to-digital replacement translator” service for full power television stations. Finally, the Commission eliminates, as of August 31, 2017, the requirement in section 15.117(b) of its rules that future TV receivers include analog tuners.

Extending the September 1, 2015 LPTV and TV Translator Digital Transition Date

2. To provide relief to analog LPTV and TV translator stations, the Commission extended the digital transition date to 12 months following the completion of the incentive auction 39-month post-auction transition period (or 51 months from the completion of the incentive auction and the release of the post-auction Channel Reassignment PN). The Commission extended the construction deadline/expiration date of all valid outstanding digital construction permits held by analog LPTV and TV translator stations transitioning to digital (currently September 1, 2015) to the new transition date. The Commission concluded that this new deadline is sufficiently far enough after the public announcement of the outcome of the incentive auction and the repacking process so as to provide stations with enough time to analyze the outcome and determine the best route to convert their analog facilities. The new deadline will provide analog stations that are displaced as a result of the auction and the repacking process a reasonable timeframe in which to obtain displacement channels, construct digital facilities, and begin operating.

3. The Commission disagreed with commenters that argued that it did not have “sufficient information” to set a new deadline now and that it should wait until after the conclusion of the incentive auction. Because it did not set a specific transition date as the Commission did in the past, but rather established a deadline that will provide a set period of time after the incentive auction and the post-auction transition process for stations to complete their

digital transitions, regardless of when the auction is complete, the Commission found that there was no additional information needed to make a decision regarding the digital transition deadline. Moreover, it disagreed that lack of knowledge of the actual impact of the auction and the post-auction transition process on analog LPTV and TV translator stations should prevent it from establishing a new digital transition date at this time. The Commission concluded that it was setting a transition date far enough after the completion of the auction (51 months) and Post-Auction Transition Period (12 months) that stations should have more than a sufficient amount of time to react, coordinate, and complete their digital transition.

4. The Commission rejected LPTV Coalition's alternative proposal to adopt a series of different deadlines based upon differing station criteria. It concluded that such a proposal would be confusing for stations, which might have a difficult time determining their specific deadline. To avoid confusion and to provide for a coordinated, seamless digital transition and consumer education, it instead adopted a uniform deadline by which all analog LPTV and TV translator stations must complete their digital transition.

5. The Commission also modified its rules to provide that analog LPTV and TV translator stations experiencing delays in completing their digital facilities may seek one last extension of time, of not more than six months, to be filed not later than four months prior to the new transition date. The Commission delegated authority to the Media Bureau to process these applications and reminded those stations seeking this "last-minute" extension that, in completing the Form 2100 – Schedule 337, they will be required to demonstrate that they meet the extension criteria set forth in section 74.788(c) of the rules. Under that rule, stations that have not completed construction of their digital facilities must show that the delay was due to circumstances that were either unforeseeable or beyond their control or due to financial hardship. Further, stations will need to demonstrate that they have taken all reasonable steps to resolve the problem expeditiously and must provide detailed information, financial or otherwise, as to why

they will be unable to meet the new transition deadline.

6. In addition, after the four-month deadline for the submission of one last extension application, analog LPTV and TV translator stations seeking additional time to construct digital facilities will be able to obtain additional time to construct only through the tolling provisions in the rules. Extension applications will no longer be accepted at that time.

7. The Commission concluded that the new digital transition date must be a hard deadline. That is, all LPTV and TV translator stations must terminate all analog operations (including any analog companion channels) by 11:59 p.m. local time on the new transition date regardless of whether their digital facilities are operational. Those without operational digital facilities will be required to remain silent while they complete construction.

8. The Commission also extended the expiration dates of all valid construction permits for new digital LPTV and TV translator stations to the new digital transition date. All such construction permits are hereby extended to the new digital transition date. In addition, the Commission dismissed as moot all pending applications for extension of time to construct such construction permits. The Commission rejected WISPA's request that permittees of new digital LPTV and TV translator stations be required to continue to file individual extension applications every six months "in a manner consistent with Commission standards." The Commission concluded that the potential impact of the incentive auction and repacking process warrants extension of the construction deadlines of all valid construction permits for new digital LPTV and TV translator stations to the new digital transition date, without the need for individual extension requests.

9. The Commission announced that permittees of new digital LPTV and TV translator stations may seek one last extension of time to complete construction, of not more than six months, to be filed not later than four months prior to the new digital transition date, consistent with the extension procedures adopted above for stations transitioning from analog to

digital. In addition, construction permits for new digital LPTV and TV translator stations granted after the release of this Third Report and Order will receive an expiration date of the later of the new digital transition date or three years from the date of grant.

LPTV and TV Translator Channel Sharing

10. The Commission extended the opportunity for channel sharing to LPTV and TV translator stations. The Commission found that specific provisions of Title III of the Communications Act of 1934, as amended, provides ample authority to adopt rules for channel sharing between LPTV and TV translator stations, including section 303(g), which authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest,” and section 307(b), which directs the Commission to “provide a fair, efficient, and equitable distribution of radio service.” Consistent with these provisions, adopting channel sharing rules will serve the public interest by promoting the efficient use of spectrum and facilitating the continued operation of LPTV and TV translator stations.

11. The Commission found that permitting channel sharing has the potential to be greatly beneficial to the low power television community. For example, stations that are displaced by the incentive auction and repacking process that have difficulty finding available channels may be able to use channel sharing to team with other such stations in the same predicament. Two or more displaced LPTV or TV translator stations may file displacement applications proposing to share a single channel. Alternatively, a displaced LPTV or TV translator station could agree to share the channel of a non-displaced station. In this way, channel sharing may offer displaced LPTV and TV translator stations valuable opportunities to continue broadcasting and a sensible way for a greater amount of service to be preserved to local communities. Channel sharing agreements (CSAs) could also minimize the number of mutually exclusive applications filed in the post-incentive auction displacement window and free up valuable channels for use by other displaced stations. Displaced stations could thus use channel

sharing as a means to prevent or settle the mutual exclusivity of their applications and avoid lengthy delays in the processing of their displacement applications.

12. In addition, the Commission found that channel sharing could provide potential cost-saving benefits to LPTV and TV translator stations through new programming and business arrangements. In the future, LPTV and TV translator stations, many of whom are small entities that operate on limited budgets, could reduce costs (such as tower leases, infrastructure, and others) by sharing facilities, and sharing could provide a source of income for stations that agree to utilize their channels to host other stations.

13. Moreover, the Commission concluded that channel sharing may also assist stations in meeting the digital transition deadline by allowing them to share the cost to construct a shared digital facility. The Commission rejected those comments questioning the potential benefits of channel sharing for LPTV and TV translator stations. The Commission concluded that channel sharing may not be right for all such stations, but the possibility that it may be a useful arrangement for some stations justifies adoption of new rules today.

14. The Commission announced that channel sharing by and between LPTV and TV translator stations will be “entirely voluntary.” It does not intend to take a role in matching licensees interested in channel sharing with potential partners. Rather, LPTV and TV translator stations will decide whether and with whom to enter into a channel sharing arrangement. The rules are also flexible and allow stations to structure their CSA in a manner that will allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved. As with full power and Class A television channel sharing, the Commission will require each LPTV and TV translator station involved in a CSA to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one SD programming stream at all times. However, the Commission will not prescribe a fixed split of the capacity of the six megahertz channel between

the stations from a technological or licensing perspective. All LPTV and TV translator channel sharing stations will be licensed for the entire capacity of the six megahertz channel, and stations will be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.

15. The Commission stated that it would apply its existing framework for the licensing and operation of channel sharing between full power and Class A stations to LPTV and TV translator stations. Under this framework, each sharing station will continue to be licensed separately, each will have its own call sign, and each licensee will separately be subject to all of the Commission's obligations, rules, and policies.

16. The Commission rejected OTI/PK's proposal that it require LPTV and TV translator stations to channel share under certain circumstances. OTI/PK asked that the Commission "analyze the feasibility of such a requirement in the 30 largest [Designated Market Areas], if it appears technically feasible for a substantial number of stations and markets" to channel share, seek further comment on implementing it. The Commission found no record support for OTI/PK's assertion that it should require stations to channel share because they are not using their spectrum efficiently. Because of their lower power and secondary nature, LPTV and TV translator stations have always been allowed to choose their channels. Changing course now and forcing LPTV and TV translator stations to share a channel would impede stations' ability to engineer their facilities to meet the needs of their viewers. Moreover, since adoption of our first channel sharing rules in 2012, the Commission has held that channel sharers, as business partners, should "have the ability to choose partners that satisfy their own criteria."

17. The Commission adopted procedures for reviewing and licensing of LPTV and TV translator station CSAs, and will apply the 30-mile and contour overlap rules to station moves resulting from channel sharing. The Commission adopted a two-step process for implementing channel sharing between LPTV and TV translator stations. As the first step, if no technical

changes are necessary for sharing, a channel sharing station relinquishing its channel will file an application for a digital construction permit for the same technical facilities as the sharer station, include a copy of the CSA as an exhibit, and cross reference the other sharing station(s). The sharer station will not need to seek Commission authorization at this time unless the CSA requires technical changes to the sharer station's facilities. If the CSA requires technical changes to the sharer station's facilities, each sharing station will be required to file an application for a construction permit for identical technical facilities proposing to share the channel, along with the CSA. As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility, and initiated shared operations, a station relinquishing its channel will notify the Commission that it has terminated operation on its former channel. At the same time, each sharing station will file an application for a license to complete the licensing process.

18. The Commission announced that it will allow channel sharing LPTV and TV translator stations three years to implement their arrangements. Although it will require that channel sharing arrangements involving full power and Class A stations resulting from the incentive auction be implemented within six months after the relinquishing station receives its reverse auction proceeds to expedite the transition to the reorganized UHF band, these concerns do not apply to CSAs entered into outside the auction context. Some stations, such as those displaced by the repacking process, may be anxious to quickly implement their shared arrangement to avoid having to go silent. Such stations are free to begin channel sharing as soon as feasible. However, other stations, including those not facing this timing constraint, may want or need more time to implement a sharing agreement.

19. The Commission stated that, in cases where the sharer station has not been displaced, it will begin accepting applications for LPTV and TV translator channel sharing after completion of the incentive auction. In cases where the sharing stations were all displaced, it

will begin accepting applications for LPTV and TV translator channel sharing at the initiation of the post-incentive auction displacement window. After that, applications may be submitted at any time on an ongoing basis.

20. The Commission stated that it would apply its existing 30-mile and contour overlap restrictions to station relocations resulting from proposed CSAs. Specifically, if requested in conjunction with a digital displacement application, a station relocation resulting from a proposed CSA may not be greater than 30 miles from the reference coordinates of the relocating station's community of license. In all other cases, a station relocating as a result of a proposed CSA (i) must maintain overlap between the protected contour of its existing and proposed facilities; and (ii) may not relocate greater than 30 miles from the reference coordinates of the relocating station's antenna location. Although it declined to eliminate the restrictions, the Commission announced that it will consider waivers for LPTV and TV translator stations to allow channel sharing modifications that do not comply with these limits. A displaced station proposing to channel share with a station located more than 30 miles from the reference coordinates of the displaced station's community of license will have to show: (1) that there are no channels available that comply with section 74.787(a)(4) of the rules; and (2) that the proposed sharer station is the station closest to the reference coordinates of the displaced station's community of license that is available for channel sharing. As for non-displacement, the Commission will apply a stricter standard because the proposed modification would be voluntary and the station would not be faced with going off the air if not permitted to channel share. In such cases, it will consider a waiver if the station seeking to relocate through channel sharing demonstrates: (1) that there is no other sharing partner that operates with a location that would comply with the contour overlap and 30-mile restrictions on the station seeking the waiver; and (2) the population in the relocating station's loss area is de minimis and/or well-served and/or would continue to receive the programming aired by the relocating station from another station.

21. The Commission adopted channel sharing operating rules that cover the terms of CSAs, the transfer or assignment of channel sharing licenses, and what occurs when a channel sharing station's license is terminated due to voluntary relinquishment, revocation, or failure to renew. The Commission will require that LPTV and TV translator CSAs contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; (4) transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and (5) termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA. While channel sharing partners will be required to address these matters in their CSAs, they may craft provisions as they choose, based on marketplace negotiations, subject to pertinent statutory requirements and the Commission's rules and regulations.

22. A station seeking approval to channel share will submit a copy of its CSA along with its application for a digital construction permit. The Commission will review the CSA to ensure compliance with its rules and policies. However, the Commission announced that it will limit its review to confirming that the CSA contains the required provisions and that any terms beyond those related to sharing of bitstream and related technical facilities comport with its general rules and policies regarding licensee agreements. The Commission reserved the right to require modification of a CSA that does not comply with the rules and policies.

23. When an LPTV or TV translator sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, its spectrum usage rights (but not its license) may revert to the remaining sharing partners if the partners so agree. In the event that only one station remains on the shared channel, that station may apply to

change its license to non-shared status using FCC Form 2100 – Schedule C. Alternatively, the station may enter into a CSA with another LPTV or TV translator station or permittee and resume shared operations, subject to Commission approval.

24. In addition, the Commission will allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act, the rules, and the requirement that the assignee or transferee comply with the applicable CSA. The Commission believes that secondary stations sharing with other secondary stations should have the flexibility to be able to determine the length of their CSAs.

Assistance to LPTV and TV Translator Stations in Finding Displacement Channels After the Incentive Auction

25. To assist LPTV and TV translator stations displaced by the auction and repacking process, the Commission delegated to the Media Bureau authority to utilize the incentive auction optimization and repacking software to identify new channels for displaced stations. The Commission concluded that use of the repacking and optimization software for this purpose will expedite and ease the post-auction transition and help many low power stations find new channel homes.

26. Specifically, the Commission instructed the Media Bureau, prior to opening the post-auction LPTV and TV translator displacement window, to utilize the repacking and optimization software to identify channels that can be proposed by displaced LPTV and TV translator stations. The Commission directed the Media Bureau to issue a Public Notice listing potential channel assignments in all areas in which LPTV or TV translator stations are displaced. If there is more than one displaced station, the Commission encouraged the stations to file for those channels in the displacement window and coordinate their filings to avoid cases of mutual exclusivity. In cases where not all displaced LPTV and TV translator stations can be accommodated onto available channels using current operating parameters, the Media Bureau

will identify possible arrangements based on other objectives, such as maximizing the number of stations assigned or minimizing the interference that stations might experience, to assist stations in examining engineering solutions to find channels. The Commission instructed the Media Bureau to issue the public notice not less than 60 days in advance of the filing window for displacement applications.

27. The Commission rejected suggestions to use our repacking and optimization software to designate LPTV and TV translator channel assignments that optimize channels for TV white space devices. Through use of the repacking and optimization software, the Media Bureau will identify potential channel assignments, but it will not “repack” LPTV and TV translator stations by requiring that they adhere to these assignments. Rather, the decision whether to seek the specific channel assignments identified by the Media Bureau will be voluntary. Stations will not be required to apply for possible channel assignments identified by the Media Bureau and will retain the flexibility to seek displacement channels that work best for their particular circumstances, so long as the channel selections comply with the licensing and technical rules.

28. The Commission also declined ATBA’s and Liberman’s suggestion that it make the repacking and optimization software available for outside use. First, the repacking software is not available at this time; the TVStudy software which will be used in the incentive auction and the repacking process, and which the Commission has made publicly available, will have to be modified to identify potential channels for displaced LPTV and TV translator stations. In addition, the optimization software incorporates proprietary software that is subject to restrictions against its release to the public, but is commercially available. The Commission also rejected LPTV Coalition’s and Syncom’s suggestion that it conduct a “mock” auction to see the effects on LPTV and translators. The effects on LPTV and translators depend in large part on broadcaster participation levels in the incentive auction and the amount of spectrum that the

auction clears, and the individual channel reassignments made to repacked broadcasters. In light of Congress's decision that LPTV and translators are not to be protected in the repack, the Commission was not persuaded that the time and staff resources that would be required to study the potential effects are warranted in light of the hypothetical nature of any such analysis prior to the auction.

Elimination of Analog Tuner Requirement

29. Given its decision to extend the digital transition date for analog LPTV and TV translator stations for one year after the post-auction transition period (51 months after the conclusion of the auction), the Commission concluded it is appropriate to retain the analog tuner requirement for a limited period. Specifically, it will sunset on August 31, 2017. The Commission believes that retaining the analog tuner requirement until that date will minimize disruption to viewers of analog LPTV and TV translator stations while at the same time providing certainty to manufacturers that choose to phase out analog tuners.

30. The Commission agreed with public broadcasters that it is still currently necessary for consumer equipment to include both analog and digital tuners to receive all signals, but the requirement will become less necessary as the new digital transition date for LPTV and TV translator stations approaches. Analog broadcasting is likely to continue until the new transition date because LPTV and TV translator stations do not want to "double build" their facilities: once for a digital transition and again for the repack. Although it sought to minimize disruption to consumers, the Commission also recognized that the analog tuner requirement imposes costs on television manufacturers that may be passed through to consumers. Significantly, sixty-two percent of low-power stations and seventy-eight percent of TV translator stations have already transitioned to digital, and these stations continue to make the transition. Therefore the vast majority of consumers no longer need to rely on devices with analog tuners and the number of consumers that still do will steadily decline as this percentage continues to

grow. Given this, and the fact that devices with analog tuners will continue to be available in remaining retail inventory and on the secondary market, the Commission concluded that it is appropriate to phase out the obligation of manufacturers prior to the transition date. The Commission found that relieving manufacturers of the analog tuner obligation on August 31, 2017 reasonably balances the goals of reducing costs for manufacturers and consumers, while minimizing disruption to viewers of analog low power television.

31. The Commission announced that it will not require manufacturers or retailers to label devices, after the rule sunsets, to alert consumers that devices do not include analog tuners. Although it recognized the importance of providing education to consumers about the capability of their devices, the Commission believed that imposing a universal requirement that manufacturers notify consumers about the limitations of digital-only devices would be counterproductive after the sunset.

Additional Measures to Preserve LPTV and TV Translator Services

32. The Commission declined to adopt the various proposals to permit LPTV and TV translator stations to operate using alternative technical standards. For the success of the post-incentive auction displacement process and to ensure continued service to the public, the Commission concluded that it is imperative that all LPTV and TV translator stations continue to operate within the current technical rules and standards. Consideration of whether to adopt new or alternative technical standards or network architectures, such as ATSC 3.0, is premature as such standards have not yet been adopted by standard setting groups. Even if such standards were to be adopted in the near future, a plan for implementation would have to be considered and developed by the Commission through notice and comment rulemaking proceedings. The Commission found that such matters are outside of the scope of this proceeding and are better left for future proceedings.

33. The Commission declined to adopt proposals to allow LPTV and/or TV

translators to obtain primary interference protection status so that they may avoid future displacement by primary users. However, the Commission stated that it may revisit the question of allowing additional LPTV and/or TV translators to obtain primary interference protection status in the future. Without reaching the legal issues, the Commission declined as a policy matter any proposal that would allow LPTV and/or TV translator stations to obtain primary status before the completion of the Post-Auction Transition Period. If LPTV or TV translators obtained primary status during this period, reassigned full power and Class A stations would have to take into account these additional protected stations when proposing expanded facilities and alternate channels, thereby impeding our goal of facilitating the post-auction transition. In addition, allowing LPTV and/or TV translator stations to become primary before the post-auction LPTV and TV translator displacement window would amount to granting these stations a priority in the displacement window – an action that would run counter to the decision in the Incentive Auction R&O, 29 FCC Rcd 6567 (2014) to grant a priority to the displacement applications for existing digital replacement translators (DRTs) and the decision to grant a priority to applications for new digital-to-digital replacement translators (DTDRTs). The Commission stated that it may consider at a later date whether to allow LPTV and/or TV translator stations to obtain primary status after the completion of the Post-Auction Transition Period.

34. The Commission rejected proposals to provide displacement priorities in the post-auction LPTV and TV translator displacement window beyond those established in the Incentive Auction R&O. In the Incentive Auction R&O, in order to help preserve the existing services of full power stations, the Commission determined that applications filed by full power television stations seeking new channels for their displaced DRTs would receive a displacement priority. A number of commenters suggest that displacement applications filed by other types of stations also be given a priority. In the Incentive Auction R&O, the Commission thoroughly considered the issue of whether to grant additional priorities during the post-auction LPTV and

TV translator displacement window and decided against such action. The Commission concluded that it was not persuaded to reverse course and add additional displacement priorities at this time.

35. The Commission declined LPTV Coalition's proposal to extend the post-auction displacement window filing opportunity to holders of construction permits for new digital LPTV and TV translator stations. As decided in the Incentive Auction R&O, only operating LPTV and TV translator stations may file displacement applications during the post-auction LPTV and TV translator displacement window. Unlike operating stations that have completed construction and are providing service to the public, permittees have not completed construction and do not have existing viewers that will be impacted by displacement. Permittees of unbuilt stations will be permitted to file for displacement channels after the conclusion of the LPTV and TV translator displacement window.

36. The Commission rejected proposals that would afford LPTV and TV translator stations more expansive cable carriage rights than those provided in the Communications Act. Commenters do not explain how such action would be within the Commission's statutory authority and, even assuming we had such authority, the Commission declined to grant must carry rights beyond those required by statute.

37. The Commission denied requests for other rule changes as unworkable or because of their potential to negatively affect the incentive auction or fall subject to other impracticalities. It announced that it will not adopt OTI/PK's proposal to permit white space devices to use the channels of licensed LPTV and TV translator stations when those stations are not broadcasting. The white space databases would have to collect additional information on the operating times of LPTV and TV translator stations on a real-time basis in order to implement OTI/PK's proposal. Because the databases are not currently designed to do so, it would not be feasible to adopt OTI/PK's proposal at this time.

38. The Commission rejected NTA's proposal to relax the limits on interference that LPTV and TV translator stations may cause to other LPTV and TV translator stations and to full-power and Class A stations. With the upcoming post-incentive auction transition process and the ongoing low power digital transition, the Commission concluded that this is not the appropriate time to allow additional interference. The costs resulting from the potential increase in interference and loss of service to viewers would outweigh the potential benefit of the slight increase in flexibility for LPTV and TV translator stations to engineer their displacement facilities. Once these transitions are complete, the Commission stated that it may consider whether to modify our rules to allow such additional flexibility.

39. The Commission rejected SEI's and Watch TV's request that it establish a general policy allowing any LPTV and TV translator station facing financial challenges to remain off the air until full power and Class A stations have been assigned new channels, even if that period exceeds 12 consecutive months. Section 312(g) of the Communications Act provides that the license of a station that is dark for any consecutive 12-month period expires automatically at the end of that period, except that the Commission can extend or reinstate such license "to promote equity and fairness." The Commission announced that it will continue to consider individual requests from stations that remain dark for any consecutive 12-month period for reinstatement of their license and a waiver of the pertinent Commission rules, taking into account the individual circumstances of each case. Consideration of a blanket exception to Section 312(g) at this time would be premature as the impact of the auction and repacking process on LPTV and TV translator stations is not yet known.

40. The Commission declined St. Clair's request that it ask Congress to provide for reimbursement of costs incurred by displaced LPTV and TV translator stations. The decision whether to authorize such funding is Congress's prerogative. Congress in the Spectrum Act limited reimbursement from the TV Broadcaster Relocation Fund to only full power and Class A

stations. While NTA recommends that the Commission “cooperate with NTIA” to help make funding available for displaced LPTV and TV translator stations, the Commission stated that it is not aware of any funding available from other agencies that could be used by displaced LPTV and TV translator stations. The Commission stated that it would cooperate as needed if LPTV and TV translator stations identify any funding opportunities.

41. The Commission announced that, as part of the cross-border coordination process it intends to make efforts to streamline the cross-border coordination processes so it will not delay the post-auction displacement application process for LPTV and TV translator stations.

42. The Commission rejected LPTV Coalition’s request that it study the LPTV industry and “what is possible to both preserving the unique services and networks it currently provides, and all of the new ones in the digital future pipeline.” The Commission found that it had satisfied this request by conducting this proceeding considering ways to preserve the low power television service and the valuable programming and services they offer. The Commission announced that it will continue to assist LPTV and TV translator stations with the post-incentive auction displacement process and transition to digital operation and to reach out to the community for their valuable input.

43. The Commission denied requests to reconsider matters previously raised in the incentive auction proceeding finding that each of these matters was fully considered in the incentive auction rulemaking proceeding and subsequent orders on reconsideration.

Creation of a New Digital-to-Digital Replacement Translator Service

44. The Commission established a new digital-to-digital replacement translator service (DTDRT) to allow eligible full power television stations to recover lost digital “service area” that results from the reverse auction and repacking process. The Commission previously created a similar analog-to-digital replacement translator service (DRT) in 2009, as full power

stations were transitioning from analog to digital operation, to assist full power stations to restore service to any loss areas that may have occurred as a result of the transition and to maintain “broadcast service that the public has come to depend upon and enjoy [in analog].” The Commission concluded that a similar replacement service may be needed for full power stations that are reassigned to new channels, either in the repacking process or through a winning UHF-to-VHF or high-VHF-to-low-VHF bid, if those full power stations discover that a portion of their existing pre-auction digital service area is lost after the station transitions to its new channel. There may be some instances in which a station may not be able to fully replicate its pre-auction digital service area. For example, a loss in pre-auction digital service area may occur as a result of a change in frequency. Moreover, like some stations transitioning to digital during the DTV transition, a station may be unable to build facilities to operate on its assigned channel at its current tower site as a result of technical or legal issues. In addition, broadcasters that voluntarily relocate to a different band may have difficulty maintaining their antenna pattern on the new channel and may experience unusual coverage problems.

45. The Commission disagreed with Venture that this new service will be unnecessary, finding that the circumstances outlined above could arise and result in full power television stations experiencing a loss of reception within their pre-auction digital service areas on initiation of their new channel facilities, despite Commission efforts to preserve coverage area and population served during the repacking process. To assist stations to overcome these potential challenges and to replace lost pre-auction digital service area resulting from new channel assignments, the Commission created a new DTDRT service.

46. The Commission will limit eligibility for DTDRTs to full power television stations reassigned in the repacking process that can demonstrate: (1) a loss of a portion of their pre-auction digital service area; and (2) that the proposed DTDRT will be used solely to fill in such loss areas, subject to an allowance for a de minimis expansion of the station’s pre-auction digital service area. The Commission concluded that these requirements are consistent with the

limited scope of its objective in proposing this new service: to assist full power television stations to maintain their pre-auction digital service areas following the completion of the repacking process and auction, but not to expand such service areas. The Commission declined to extend eligibility for DTDRTs, as suggested by Sinclair, to “[a]ny station that suffers loss of service as a result of repacking – from channel changes, power changes, site changes, or any other factors beyond the station’s control.” The Commission decided to limit eligibility for new DTDRTs to only stations reassigned in the repacking process in order to preserve channels for use by other broadcasters, especially displaced LPTV and TV translators.

47. To implement this eligibility restriction, applicants for DTDRTs will be required to demonstrate a digital loss area through an engineering study that depicts the stations’ pre- and post-incentive auction digital service areas and will be required to demonstrate that the loss resulted from the station’s being repacked in conjunction with the incentive auction. The Commission defined the “pre-auction digital service area” as the geographic area within the full power station’s noise-limited contour of its facility as set forth in the Auction Procedures PN, DA 15-1296 (rel. Nov. 12, 2015).

48. To accommodate situations where it may be impossible to locate a translator that replaces digital loss areas without also slightly expanding the station’s pre-auction digital service areas, the Commission announced it will allow applicants to propose de minimis expansions of pre-auction digital service areas based on the showing described below. The Commission defines de minimis on a case-by-case basis, consistent with the approach it took for processing DRT applications. Therefore, the Commission will require stations to show the need to site their DTDRT with a de minimis expansion of the station’s pre-auction digital service area. The Commission declined Sinclair’s suggestion that it adopt a more flexible approach and allow applicants to demonstrate that the site specified for their DTDRT is the most practical or cost-efficient option, that the de minimis expansion offsets other loss of service by the broadcaster that cannot be remedied by a DTDRT, or that the site better facilitates preservation of service by

another reassigned broadcaster. Because there will be a more tightly packed broadcast band post-auction, the Commission concluded to strictly limit DTDRT's coverage to just what is needed.

49. The Commission will allow eligible stations to file for DTDRTs beginning with the opening of the post-auction LPTV and TV translator displacement window and ending one year after the completion of the incentive auction 39-month post-auction transition period.

Pursuant to this plan, stations may begin applying for DTDRTs during the LPTV and TV translator displacement window and will then have one year beyond the completion of the Post-Auction Transition Period to identify the need and apply for a DTDRT. Full power television stations must have the flexibility to file for a DTDRT throughout the post-auction transition and for a brief period thereafter. A full power television station may identify the need for a DTDRT early in the post-auction transition or may not realize that it needs one until it completes construction of its new facilities and begins operating. Some stations may not identify the need for a DTDRT until a short time later when they begin receiving reports of loss of service from viewers. Accordingly, the Commission concluded that allowing full power stations to file for a DTDRT for one year after the completion of the Post-Auction Transition Period will provide sufficient time to identify any possible loss areas while also helping to limit this service to its proposed objective of recovering lost service area that results from the auction and repacking process.

50. The Commission will afford DTDRT applications co-equal processing priority with DRT displacement applications. Therefore, applications for new DTDRTs and displacement applications for existing DRTs will have processing priority over all other LPTV and TV translator applications including new, minor change, and displacement applications. Under this approach, the Commission will begin accepting applications for new DTDRTs commencing with the opening of the post-auction LPTV and TV translator displacement window. All applications for new DTDRTs and displacement applications for existing DRTs filed during the post-auction displacement window will be considered filed on the last day of the window, will

have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and will be considered co-equal if mutually exclusive. Following the close of the displacement window, applications for new DTDRTs will be accepted on a first-come, first-served basis, will continue to have priority over all LPTV and TV translator new, minor change, or displacement applications, even if first-filed, and co-equal priority with displacement applications for existing DRTs filed on the same day.

51. The Commission concluded that adoption of this processing priority is necessary to assist those full power stations that identify the need to implement a new DTDRT to quickly obtain an authorization and schedule construction of the DTDRT to coincide with the completion of their modified full-power facilities and thereby avoid disruption of service. Were it to not afford these applications a priority, they could become mutually exclusive with LPTV and TV translator applications filed in the post-incentive auction displacement window, greatly delaying their processing. This, in turn, could prevent full power television stations from completing construction of their DTDRTs until after the post-incentive auction transition, thus resulting in a loss of service. At the same time, the Commission established co-equal processing priority with displaced DRTs to ensure that full power stations with existing DRTs can construct on their new channel expeditiously to help preserve their existing service. The Commission concluded that it had authority to afford DTDRTs a co-equal processing priority under specific provisions of Title III of the Communications Act of 1934, as amended, including Section 303(c), which empowers the Commission to “assign frequencies for each individual station” in the public interest; Section 303(g), which authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest”; and Section 307(b), which directs the Commission to “provide a fair, efficient, and equitable distribution of radio service.” Consistent with these provisions, the processing priority will serve the public interest by assisting full power television stations to maintain their pre-auction digital service areas and help prevent loss of service following the completion of the repacking process and auction.

52. The Commission rejected Mako’s claim that its grant of a processing priority to DTDRTs is contrary to section 1452(b), which provides for the UHF band reorganization. While Section 1452(b)(5) provides that “[n]othing in [section 1452(b)] shall be construed to alter the spectrum usage rights of low-power television stations,” it does not affect the Commission’s broad authority outside of section 1452(b) to manage spectrum in the public interest, which provides the legal basis for the actions we take today. To the contrary, section 1452(i)(1) specifically preserves that authority by stating that nothing in section 1452(b) “shall be construed to . . . expand or contract the authority of the Commission, except as otherwise expressly provided.” There is no express provision in section 1452(b) prohibiting the Commission from granting DTDRT applications a processing priority. Further, adoption of a processing priority for applications for new DTDRTs is consistent with the 2009 decision to grant a similar priority for applications for DRTs.

53. The Commission also rejected arguments that its decision could negatively affect the ability of displaced LPTV and TV translator stations to find a new channel post-auction and force some stations off the air. While we recognize that many LPTV and TV translator stations will also be struggling to deal with the impact of the incentive auction and repacking process while constructing their digital facilities to meet the newly established digital transition date, the Commission concluded that the need to help full power stations prevent or restore lost service area outweighs the limited impact that the licensing of new DTDRTs will have on the availability of channels for displaced LPTV and TV translator stations.

54. The Commission also rejected LeSea’s proposal that full power stations be required to identify the need for a DTDRT earlier, such as during the three-month period following the release of the Channel Reassignment PN when stations will submit applications for construction permits for their newly assigned channels. After the three-month period closes, LeSea suggests that applications for DTDRTs be accepted without the priority over other earlier-filed LPTV and TV translator applications. Some full power television stations, however, may

not identify the need for a DTDRT until later in the transition when, for example, they begin testing or operating their completed modified facilities. Therefore, full power stations in such situations may need to obtain a DTDRT later in the transition. In these circumstances, priority processing will ensure that the application for DTDRT is quickly processed.

55. Finally, the Commission rejected Venture's proposal that applications for DTDRTs "be accepted only after existing licensed LPTV stations are successfully displaced to other channels." Adoption of Venture's proposal could prevent full power television stations that identify the need to implement a new DTDRT early in the transition process to quickly obtain an authorization and schedule construction to coincide with the completion of their modified facilities.

56. In order to implement the new DTDRT service, the Commission adopted the following licensing and operating rules. The Commission will associate DTDRTs with the full power television station's main license. This is the same approach adopted for licensing DRTs. DTDRTs, therefore, may not be separately assigned or transferred and will be renewed, transferred, or assigned along with the main license. Applications for DTDRTs will be filed on FCC Form 2100 – Schedule C, will be treated as minor change applications, and will be exempt from filing fees. DTDRTs will be licensed with "secondary" frequency use status. Under this approach, DTDRTs, like DRTs before them, will not be permitted to cause interference to, and must accept interference from, full power television stations, certain land mobile radio operations, and other primary services, and will be subject to the interference protections to land mobile station operations in the 470-512 MHz band set forth in our rules. The Commission will apply the existing rules associated with TV translator stations to DTDRTs, including the rules concerning power limits, out-of-channel emission limits, unattended operation, time of operation, and resolution of mutual exclusivity. The Commission will assign DTDRTs the same call sign as their associated full power television station and provided a full three-year construction period for full power television stations to build their DTDRTs.

57. The Commission announced that it was permanently discontinuing the acceptance of applications for new DRTs. In August 2014, following adoption of rules for the incentive auction, the Media Bureau placed a freeze on the filing of applications for DRTs because full power stations had more than five years to apply for this type of replacement translator following the 2009 full-power digital transition. The Commission concluded that future DRT applications are no longer necessary for stations to replace an analog loss area that occurred as a result of the digital transition over six years ago. However, the Commission will continue to accept displacement applications for existing DRTs.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the Third Notice of Proposed Rule Making, 29 FCC Rcd 12536 (2014) (Third Notice). The Commission sought written public comment on the proposals in the Third Notice, including comment on the IRFA. Because we amend the rules in this Third R&O, we have included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA.² We note that no formal comments were filed on the IRFA but many of the commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the Third R&O and in the FRFA.

Need for and Objectives of the Rules

On June 2, 2014, the Federal Communications Commission (Commission) released its Incentive Auction Report and Order, 29 FCC Rcd 657 (2014), adopting rules to implement the broadcast television spectrum incentive auction authorized by the Middle Class Tax Relief and

¹ See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. 604.

Job Creation Act (Spectrum Act). The Commission recognized in the Incentive Auction Report and Order that the incentive auction will have a significant impact on low power television stations and TV translator stations. As part of the incentive auction, the Commission will (1) conduct a “reverse auction,” whereby full power and Class A television stations may opt to relinquish some or all of their spectrum usage rights in exchange for incentive payments, and (2) reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses. The Commission concluded in the Incentive Auction Report and Order that the Spectrum Act does not mandate the protection of LPTV and TV translator stations because the scope of mandatory protection under section 6403(b)(2) is limited to full power and Class A television stations. The Commission also declined to extend discretionary protection to these stations because of the detrimental impact such protection would have on the repacking process and the success of the incentive auction. Accordingly, some LPTV and TV translator stations will be displaced as a result of the repacking process and required to either find a new channel or discontinue operations.

In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, the Commission stated that it intended to initiate an LPTV/TV Translator rulemaking proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process.”

In the Third R&O, the Commission: (1) extended the September 1, 2015 digital transition deadline for LPTV and TV translator stations; and (2) adopted rules to allow channel sharing by and between LPTV and TV translator stations. The Commission also announced that it would use the incentive auction optimization software to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels. The Commission considered and rejected other measures proposed by commenters to further mitigate the impact of

the auction and repacking process on LPTV and TV translator stations. In the *Third Report and Order*, the Commission also created a “digital-to-digital replacement translator” service for full power stations that experience losses in their pre-auction digital service areas. The Commission also eliminated the requirement in section 15.117(b) of the rules that TV receivers include analog tuners.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ The statutory definition of a small business applies unless an agency establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁶

Television Broadcasting. This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs

³ *Id.* at § 603(b)(3).

⁴ 5 U.S.C. 601(6).

⁵ *Id.* at § 601(3).

⁶ 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

to the public.”⁷ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.⁸ The Commission has estimated the number of licensed commercial television stations to be 1,390.⁹ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s Media Access Pro Television Database on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.¹⁰ We therefore estimate that the majority of commercial television broadcasters are small entities.

We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included.¹¹ Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

In addition, the Commission has estimated the number of licensed noncommercial

⁷ U.S. Census Bureau, 2012 NAICS Definitions: 515120 Television Broadcasting, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014). U.S. Census Bureau, 2012 NAICS Definitions: 515120 Television Broadcasting, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

⁸ 13 CFR 121.201 (NAICS code 515120) (updated for inflation in 2010).

⁹ See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 9, 2015).

¹⁰ We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

¹¹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 CFR 121.103(a)(1).

educational (“NCE”) television stations to be 395.¹² These stations are non-profit, and therefore considered to be small entities.¹³

There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations.¹⁴ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment¹⁵ as well as radio and television broadcasting and wireless communications equipment.¹⁶ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁷ Census Bureau data indicates that there are 554 U.S. establishments that

¹² See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

¹³ See generally 5 U.S.C. 601(4), (6).

¹⁴ See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

¹⁵ 13 CFR 121.201, NAICS Code 334310.

¹⁶ 13 CFR 121.201, NAICS Code 334220.

¹⁷ 13 CFR 121.201, NAICS Code 334310.

manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁸ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.¹⁹ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.²⁰ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements

The Third R&O adopted the following new reporting requirements. To implement channel sharing between LPTV and TV translator stations, the Commission will follow a two-

¹⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁹ 13 CFR 121.201, NAICS Code 334220.

²⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

step process – stations will first filing an application for construction permit and then application for license. Stations terminating operations to share a channel will be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, channel sharing stations will be required to submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, if upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status. The existing collection concerning the execution and filing of CSAs will be revised.

To implement its proposed new digital-to-digital replacement translator service, the Commission will revise its existing replacement translator form, rules and collections and to expand the burden estimates.

These new reporting requirements will not differently affect small entities.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²¹

²¹ 5 U.S.C. § 603(c)(1)-(c)(4).

Digital Transition Date. The Commission's decision to extend the September 1, 2015 LPTV and TV Translator digital transition date will greatly minimize the impact on small entities having to complete their transition to digital. Instead of having to possibly endure the expense of having to construct a digital facility only to be displaced by the incentive auction reorganization of spectrum and having to finance the construction of a second digital facility, the Commission's extension of the transition deadline will allow small entities to wait until the incentive auction is complete and to determine the impact on their digital transition plan.

Channel Sharing. The Commission's decision to allow LPTV and TV Translator to share channels between themselves will greatly minimize the impact on small entities. Many stations will be displaced by the incentive auction reorganization of spectrum and allowing these stations to channel share will reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement.

The Commission's licensing and operating rules for channel sharing between LPTV and TV translator stations were designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

Assistance to Displaced Stations. The Commission's efforts to assist LPTV and TV translator stations in finding displacement channels after the incentive auction will greatly benefit small entities. By helping stations find new channels from a smaller universe of channels that will remain after the incentive auction reorganization of channels, the Commission will save small entities time and money by not having to consult with an engineer to make such

determinations. Such savings can then be used to construct and operate the displacement facility. The Commission rejected calls to “repack” all displaced LPTV and TV translator stations by assigning their frequencies finding that such a plan would interfere with stations ability to engineer their facilities as they see fit and 30 years of licensing history.

Digital to Digital Replacement Translators. The Commission is aware that some full service television stations operate with limited budgets. Accordingly, every effort was taken to adopt rules for the new digital-to-digital replacement translator service that impose the least possible burden on all licensees, including small entities. Existing forms will be used to implement this new service thereby reducing the burden on small entities.

The Commission concluded that applications for digital-to-digital replacement translators should be given licensing priority over all other low power television and TV translator applications, except displacement applications for analog-to-digital replacement translators (for which they would have co-equal priority). The Commission could have adopted no such priority, but this would have resulted in many more mutually exclusive filings and delayed the implementation of this valuable service.

The Commission also decided to limit the eligibility for such service to any station that can demonstrate that it experienced a loss of digital service area as a result of the incentive auction or repacking process. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service.

The Commission further concluded that the service area of the replacement translator should be limited to only a demonstrated loss area and permitted stations to expand slightly its pre-incentive auction service area. Once again, the Commission could have allowed stations to file for expansion of their existing service areas but such an alternative could result in the use of valuable spectrum that the Commission seeks to preserve for other uses.

The Commission concluded that replacement digital television translator stations should be licensed with “secondary” frequency use status. The Commission could have decided that replacement translators be licensed on a primary frequency use basis, but this alternative was not adopted because it would result in numerous interference and licensing problems.

The Commission determined that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station’s main license. Therefore, the replacement translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station’s main license. Alternatively, the Commission could have decided that the replacement translator license be separate from the main station’s license, however this approach could result in licenses being sold or modified to serve areas outside of the loss area, and thus would undermine the purpose of this new service.

The Commission also concluded that the other rules associated with television translator stations will apply to the new replacement translator service, including those rules concerning the filing of applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not adopted as it would adversely impact stations ability to quickly implement these new translators.

The Commission’s conclusion to discontinue accepting applications for analog-to-digital replacement translators may impact small entities. However, the Commission determined that future analog-to-digital replacement translator applications are no longer necessary for stations to replace an analog loss area that occurred as a result of the digital transition over six years ago.

Elimination of Analog Tuner Mandate. The Commission decided to permit equipment manufacturers to forego having to include an analog tuner in their television sets determining that it would benefit small entity equipment manufacturers. Having to include an analog tuner increases the cost of a television sets and equipment manufacturers, some of whom may be small

entities, would enjoy a cost savings as a result of the Commission's proposal. The Commission determined that any impact that not including an analog tuner in new television sets may have upon consumers should be minimal now that the full power digital transition has been complete for over five years and would be outweighed by the benefit of less expensive digital television sets.

Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

None.

List of Subjects

47 CFR Part 15

Communications equipment.

47 CFR Part 74

Television.

FEDERAL COMMUNICATIONS COMMISSION.

Sheryl Todd,
Deputy Secretary.

Final rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 73 as follows:

PART 15 – RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Amend § 15.117 by revising paragraph (b) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(b) Until August 31, 2017, TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service. After August 31, 2017, TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service that broadcast digital signals, but they need not be capable of receiving analog signals.

* * * * *

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

2. The authority citation for Part 74 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

3. Amend § 74.731 by revising paragraph (l) and adding paragraph (m) to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(l) After 11:59 pm local time on September 1, 2015, Class A television stations may no longer operate any facility in analog (NTSC) mode.

(m) After 11:59 pm local time, 51 months following the release of the Channel Reassignment Public Notice announcing completion of the incentive auction conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96)), low power television and TV translator stations may no longer operate any facility in analog (NTSC) mode and all licenses for such analog operations shall automatically cancel at that time without any affirmative action by the Commission.

4. Amend § 74.787 by revising paragraphs (a)(5) and (b)(2) to read as follows:

§74.787 Digital Licensing.

(a) ***

(5) *Applications for analog-to-digital and digital-to-digital replacement television translators.* (i) Applications for new analog-to-digital replacement translators will not be accepted. Displacement applications for analog-to-digital replacement translators will continue to be accepted. An application for a new digital-to-digital replacement translator may be filed beginning the first day of the low power television and TV translator displacement window set forth in § 73.3700(g)(1) of this part to one year after the completion of the 39-month post-auction transition period as defined in § 27.4 of this chapter. Applications for digital-to-digital replacement translators filed during the displacement window will be considered filed on the last day of the window. Following the completion of the displacement window, applications for digital-to-digital replacement translators will be accepted on a first-come, first-served basis.

(ii) Each original construction permit for the construction of a displacement analog-to-digital or new or displacement digital-to-digital replacement television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their displacement analog-to-digital or new or displacement digital-to-digital replacement television translator station.

(iii) Displacement applications for analog-to-digital replacement television translators shall be given processing priority over all other low power television and TV translator new, minor change, or displacement applications except applications for digital-to-digital replacement television translators with which they shall have co-equal priority. Applications for digital-to-digital replacement television translators shall be given processing priority over all low power television and TV translator new, minor change, or displacement applications, except displacement applications for analog-to-digital replacement translators with which they shall have co-equal priority.

(iv) Applications for new digital-to-digital replacement television translators and displacement applications for analog-to-digital and digital-to-digital replacement television translators shall be treated as an application for minor change. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 et seq. and § 73.5000 et seq. of this chapter.

(v) A license for a digital-to-digital replacement television translator will be issued only to a full-power television broadcast station licensee that demonstrates in its application a loss in the station's pre-auction digital service area as a result of the broadcast television spectrum incentive auction, including the repacking process, conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96). "Pre-auction digital service area" is defined as the geographic area within the full power station's

noise-limited contour (as set forth in Public Notice, DA 15-1296, released November 12, 2015).

The service area of the digital-to-digital replacement translator shall be limited to only the demonstrated loss area within the full power station's pre-auction digital service area, provided that an applicant for a digital-to-digital replacement television translator may propose a *de minimis* expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace a loss in its pre-auction digital service area.

(vi) The license for the analog-to-digital and digital-to-digital replacement television translator will be associated with the full power station's main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full power station's main license.

(vii) Analog-to-digital and digital-to-digital replacement television translators may operate only on those television channels designated for broadcast television use following completion of the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96).

(viii) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

Applicable Rule Sections
§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
§ 74.703 Interference
§ 74.709 Land mobile station protection.
§ 74.734 Attended and unattended operation
§ 74.735 Power Limitations
§ 74.751 Modification of transmission systems.

§ 74.763 Time of Operation

§ 74.765 Posting of station and operator licenses.

§ 74.769 Copies of rules.

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except §73.653 – Operation of TV aural and visual transmitters and §73.1201 – Station identification).

§74.781 Station records.

§74.784 Rebroadcasts.

* * * * *

(b) ***

(2) Other facilities changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section.

* * * * *

5. Amend § 74.788 by revising paragraphs (a), (c)(1), (c)(3) and (d) to read as follows:

§74.788 - Digital construction period.

(a) Except as indicated below, each original construction permit for the construction of a new digital low power television or television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Construction permits for the construction of a new digital low power television or television translator station granted after the release of the LPTV DTV Third Report and Order, MB Docket No. 03-185 (FCC 15-175) shall specify the later of either the digital transition deadline or three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

* * * * *

(c) Authority delegated. (1) For the September 1, 2015 Class A television digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the Class A station that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously. For the low power television and TV translator station digital transition deadline set forth in § 74.731(l) of this subpart, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the digital transition deadline set forth in § 74.731(l) upon demonstration that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the station's control where the station has taken all reasonable steps to resolve the problem expeditiously.

* * * * *

(3) Applications for extension of time filed by Class A television stations shall be filed not later than May 1, 2015 absent a showing of sufficient reasons for late filing. Applications for extension of time filed by low power television and TV translator stations shall be filed not later than four months before the digital transition deadline set forth in § 74.731(l) of this subpart absent a showing of sufficient reasons for late filing.

(d) For Class A television digital construction deadlines occurring after September 1, 2015, the tolling provisions of § 73.3598 shall apply. For low power television and TV translator digital construction deadlines occurring after the digital transition deadline set forth in § 74.731(l) of this subpart, the tolling provisions of § 73.3598 shall apply.

* * * * *

6. Add § 74.800 to read as follows:

§ 74.800 Low Power Television and TV Translator Channel Sharing

(a) Channel sharing generally. (1) Subject to the provisions of this section, low power television and TV translator stations may voluntarily seek Commission approval to share a single six megahertz channel with other low power television and TV translator stations.

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies.

(b) Licensing of channel sharing stations. The low power television or TV translator channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit, include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing arrangement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to § 73.1750 of this part and each sharing station must file an application for license.

(c) Deadline for implementing channel sharing arrangements. Channel sharing arrangements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel sharing agreements. (1) Channel sharing agreements (CSAs) submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Allocation of bandwidth within the shared channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(iv) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(v) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) CSAs must include provisions:

(i) Affirming compliance with the channel sharing requirements in paragraph (d)(1) of this section and all relevant Commission rules and policies; and

(ii) Requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition program stream at all times.

(e) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(v) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status using FCC Form 2100, Schedule D.

(f) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

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